

**ADDITIONAL VIEWS OF SENATOR JOSEPH LIEBERMAN**  
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CAMPAIGN FINANCE INVESTIGATION  
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Of the thousands of statements the Senate Governmental Affairs Committee heard through the course of its investigation of the 1996 Federal elections, one of the most telling was a brief comment by former White House Deputy Chief of Staff Harold Ickes. Challenged about his handling of a questionable transaction during the final week of the 1996 Presidential campaign, Mr. Ickes defended his conduct in part by pointing to the chaotic atmosphere of the time. "We were like the mad hatters," he said.<sup>1</sup>

This metaphor for the fundraising madness of the 1996 election cycle seems right on the money -- too many good people running around like mad hatters doing all kinds of bad things. There was in fact a surreal quality to the whole of the scandal, with the bizarre cast of characters that came before the Committee, the torturous twists of logic many of the witnesses used to rationalize their actions, and the overarching sense emerging from the investigation that our polity has fallen down a long dark hole into a place that is far from the vision and values of those who founded our democracy.

In that strange place, we have learned, the law appeared to be written in invisible ink. It was somehow possible, for example, for wealthy donors to give hundreds of thousands of dollars to finance campaigns even though the law was clearly intended to limit their contributions to a tiny fraction of those sums. It was possible for unions and corporations to donate millions to the parties at the candidates' request, despite the decades old prohibition on those entities' involvement in Federal campaigns. It was possible for the two presidential nominees to spend much of the fall shaking the donor trees even though they had pledged under the law not to fundraise for their campaigns after receiving \$62 million each in taxpayer funds. And it was possible for tax-exempt groups to run millions of dollars worth of television ads that clearly endorsed or attacked particular candidates even though they were barred by law from engaging in such partisan activity.

Where Harold Ickes' analogy breaks down, of course, is that the story of how Washington turned into Wonderland on the Potomac has no fairy tale ending. Surreal as much of it seems, the fundraising scandal of 1996 was a very real tragedy with very real consequences for our democracy. The truth is that the mad hatters from both parties did more than just beg credulity, they betrayed the public trust. In their breathless, boundary-less rush to raise more money to pay for more television ads, they effectively hung a giant "For Sale" sign on our government and the whole of our political process. In so doing, they also hung out to dry some of the most fundamental values underpinning our American experiment in self-rule. And they gave most Americans, already beset by cynicism,

good reason to doubt whether they had a true and equal voice in their own government. That is the dark hole we find ourselves in today.

In its work, the Committee was challenged to hold up a looking glass to the machinations of the mad hatters during the 1996 election cycle, to expose the sham that our campaign finance laws have become, and to show the American people the consequences of conducting elections without any limits or standards to protect the public interest and discourage our worst impulses. The Committee was challenged to cut through the Jabberwockian legalisms that witnesses and their lawyers often invoked to justify their side's incredible behavior and get at the facts, regardless of what they revealed or who they jeopardized.

I emphasized that last point at the commencement of the hearings when I said that our job was not to be prosecutors or defense attorneys, but "searchers for truth."<sup>2</sup> While noting that there would be a strong temptation to give in to our partisan instincts in light of the high political stakes involved, I argued that we had an obligation to temporarily put aside our individual party allegiances for the duration of the Committee's work. "With each witness we question, we must seek only the truth, no more and no less," I said, "and we must accept that truth and not try to force it improperly into any preconceived construct that any of us may bring to the table."<sup>3</sup>

Although I was disappointed with the partisanship that too often crept into our proceedings and diminished our effectiveness, I nevertheless believe the Committee succeeded in compiling a compelling record, one that leaves little question that our political system was subverted in 1996 by an unquenchable thirst for money and that our democratic process suffered grievous harm as a result. It was an unseemly, disheartening story in many respects, but one that had to be told to dramatize the need for bold campaign finance reform, and I am grateful for having had the opportunity to work with my colleagues of both parties on the Committee and their staffs to gather and tell this story to the American people.

I have joined in the Minority Views because they are the product of an open and constructive effort among the Democratic members of the Committee, which far more often than not resulted in findings and recommendations that are consistent with my conclusions about what happened during the 1996 Federal election cycle. The Democratic report offers criticism where criticism is most due, detailing and then condemning numerous examples of impropriety and wrongdoing associated with members and officials of both political parties and both political branches of government. At the same time, it appropriately notes several instances where such criticism is not warranted by the facts. While the Minority Views may sometimes seem partisan, they are in the end much less partisan and much

more objective in their evaluation of the evidence before the Committee than the Majority's report, and the Minority's recommendations for reform are much more responsive to the facts the Committee found.

I have nevertheless chosen to offer these Additional Views to note some points of disagreement with the Majority and Minority views, to underscore some points of agreement, and ultimately to present my own overview of the significance of the Committee's investigation. Working on this investigation was an important experience for me, and I came away from it with some strong personal conclusions about the implications of the Committee's findings, which I want to summarize here. In particular, I want to focus on the moral breakdown that coincided with and contributed to the political one.

An important part of what is at issue here, I believe, are the distinctions we make between illegal and improper conduct in public life and the standards we use to judge them, something the Senate struggled with in initially defining the scope of our investigation and the Committee itself wrestled with through the course of its proceedings.<sup>4</sup> To this day, some contend that these distinctions are essentially irrelevant to the Committee's work, arguing that the bulk of the activities we investigated violated laws already on the books and therefore the appropriate response should simply be tough punishment now and tougher enforcement in the future. The facts our Committee found in this investigation strongly suggest otherwise, and point to a real need to ask some much broader and more fundamental questions about this scandal -- among them, how we in politics have drawn ethical lines, how those lines should be drawn in the future, and whether in fact simply recalibrating them within the law will be enough to rescue us from the dark hole into which we have fallen.

That is not to gloss over the evidence that some individuals appear to have broken the law in the course of the 1996 Federal elections.<sup>5</sup> The Committee heard testimony about people using other people's money to fund political contributions,<sup>6</sup> foreign nationals channeling money into American campaign coffers,<sup>7</sup> and Federal workers soliciting campaign contributions<sup>8</sup> -- all activities that certainly appear to have violated applicable and existing laws. The Committee's investigation helped expose those events, and it is now for the Justice Department and the Federal Election Commission ("FEC") to investigate them and, if appropriate, to take civil enforcement actions or prosecute those involved. That is an important part of responding to the excesses of the 1996 elections, and it must not be devalued by those who wish to prevent these abuses from happening again. For it is by holding accountable those who violate our laws that we engender the respect those laws deserve and create a real incentive for the people operating in the campaign finance system to

abide by the rules in the future.<sup>9</sup>

But with that said, the sad truth is that most of the worst behavior that occurred in the 1996 elections was legal. Consider again the examples I cited above to illustrate the surreal nature of the current system -- the blatant skirting of the limits on individual contributions, the subversion of the restrictions on presidential candidates who receive public funds, the conversion of supposedly non-partisan, tax-exempt groups into political agents, and the infusion of millions of union and corporate dollars into the two parties despite the law's absolute ban on their involvement in Federal campaigns. Each of these acts compromised the integrity of our elections and our government in 1996. Each of these acts plainly violates the spirit of our laws. Yet each appears to be legal.

In effect, then, what the law permitted in 1996 was as outrageous as any crimes that were committed. This point is enormously significant not just in terms of gauging the import of this scandal, but in determining the steps our polity should take to repair our broken campaign finance system. Criminal indictments brought by the Justice Department, FEC enforcement actions, and changes in party compliance procedures will go far to prevent a recurrence of the illegal activities that occurred during the 1996 cycle. Yet we can make no similar statement for the wide range of corrosive activities that continue to be legal. In fact, just the opposite is true -- we know for a certainty that these behaviors will not end with the 1996 elections unless we make them illegal.

Our investigation also revealed something more profoundly unsettling -- it is not just the system that has been compromised and corrupted, but the values and standards of those operating within it. As in many segments of our society today, from the professional sports leagues that wink at the outrageous behavior of big stars that help them generate big revenue to the TV talk show producers who sink to new lows in degradation and exploitation every day to gain higher ratings and more advertising revenue, the bottom line in politics -- raising money to win elections -- has too often become the dominant line. In the process, basic differences between right and wrong have been blurred to the point that the operative standard for campaigns today is not what is right but what is technically legal. This helps to explain how we got to Wonderland in Washington.

Plugging the most egregious loopholes to make the clearly improper clearly illegal will make the law more consistent with our values and likely deter some future wrongdoing, which are more than sufficient reasons to do so. But these changes in the end will not be enough. We must reduce the unrelenting pressure to raise vast sums of money. It is this pressure that wore down the mad hatters' moral immune system and pushed them to duck, dodge and ultimately debase the laws we have now. And it is this pressure that will continue to drive good people to do bad things, almost

regardless of what the law calls for, if we do not comprehensively recast the system to permanently defuse the fundraising arms race and stem the corrosive influence of big money. That is the challenge now ahead of us.

## **Partisanship of the Investigation**

Before turning to the substance of the Committee's investigation, I want to comment on its process, because the manner in which it was conducted significantly affected the topics the Committee chose to investigate, colored the Committee's findings, and by extension determined in large part the subjects I discuss below.

I firmly believe that the Committee's investigation and hearings served the valuable purpose of shedding light on the failings of the campaign finance system and those who operate within it. The Committee leaves behind an extensive factual record that builds a powerful case for campaign finance reform.

Compelling as that record is, though, it is incomplete. That is because the persistent partisanship of the investigation kept it from living up to its full potential, leaving the American people with only a partial picture of the extent of the abuses committed during the last election cycle. As the Minority Views extensively detail, the Committee's investigation and hearings focused primarily and overwhelmingly upon the Democratic Party and its affiliates, despite significant evidence that the Republican Party and its affiliates also engaged in questionable activities.

The Committee omitted from public view entire areas of inquiry, such as the use of independent and tax-exempt groups to improperly conduct surreptitious campaign activity, a topic that touched closely on persons and entities associated with the Republican Party. And, although the Committee's investigation appropriately examined the fundraising practices of those associated with the DNC and the Democratic Administration, it wrongly declined to review strikingly similar activities of the leadership of the RNC and the Republican-controlled Congress, who raised significant amounts of money in connection with the presidential campaign, often by selling access to large contributors.

Some will say this partisanship was inevitable given the difficulties in conducting such an inherently political investigation, but I am not convinced of that. In retrospect, the Senate should have, as has been done in the past, assigned the investigation to a bipartisan Special Committee with a joint, nonpartisan staff, or the Governmental Affairs Committee should have created a joint bipartisan staff for this investigation. Neither of these courses was taken, and so this non-traditional

investigation proceeded with the Members of the majority party retaining their traditional and almost unlimited power to control the subjects and targets of the proceedings. As a result, the investigation split into two, with Members of the Majority too often putting on the case as if they were prosecutors, and Members of the Minority too often concluding they had to act as defense counsel.

Because the Republicans are in the Majority and so had final say on determining who the Committee subpoenaed and on whom the Committee's hearings focused, it was their partisanship that ultimately had the greatest impact. Most of the Committee's subpoenas targeted people and organizations associated with the Democratic Party, and most of the Committee's public hearings were spent exploring Democratic misdeeds. As a result, most of the examples I discuss below involve the Democratic Party, but I emphasize that is because I have chosen to address the Committee's record as I have found it, not because I believe the Republican Party is devoid of similar wrongdoing.

I cannot leave the topic of partisanship without commenting on what is perhaps its most damaging long-term legacy: its impact on the ability of future Senate investigations to use compulsory subpoenas to obtain the information needed to do their job. As detailed in the Minority Views, the Committee repeatedly failed to enforce subpoenas it issued to Republican Party organizations and affiliates and to a number of outside groups espousing ideologies traditionally associated with the Democratic and Republican parties.<sup>10</sup> Although it is questionable whether the Committee ever would have taken action against these groups, there is no doubt that the groups were significantly emboldened by their knowledge that the Committee's investigation had a pre-ordained end date of December 31, 1997. These groups calculated -- correctly as it turned out -- that if they could stall long enough, the Committee's mandate would wear out long before it found the will to take action against recalcitrant recipients of its subpoenas. For this reason, I firmly believe it was a mistake for the Senate to have imposed a fixed end-date to the Committee's investigation.

What is the lesson the subjects of future Senate investigations will take from this experience? They will stall and stonewall and assume that Senate investigators will not take them to court. I hope that the committee conducting the next politically-charged Senate investigation acts quickly to prove this assumption unfounded.

### **The Origin of the Problem: The Supreme Court's Decision in *Buckley v. Valeo*<sup>11</sup>**

To understand how the excesses of the 1996 election cycle came to pass, one must start with the untenable legal framework within which our campaign finance system has been operating. The basic law took shape through the campaign finance reforms that Congress enacted in 1974 in the

aftermath of Watergate. The goal of this law sounds familiar -- to temper the corrosive impact of money in our politics. It attempted to do so by limiting the contributions people could make to parties and campaigns “with respect to any election for Federal office”<sup>12</sup> and by limiting the amount of money campaigns could spend.<sup>13</sup> By squeezing campaigns on both sides of the ledger, the 1974 law aimed at creating a tight lid on the overall flow of money into the system and thereby reducing the potential of large contributors to have a corrupting influence on our elected officials.

The Supreme Court, however, prevented us from ever really testing that theory by quickly striking down the law’s spending limits as unconstitutional in its landmark 1976 decision in *Buckley v. Valeo*. At the heart of the Court’s ruling was the finding that money equals speech under the First Amendment. The Court reasoned that because most forms of campaign communication (television and radio commercials, newspaper ads, and the like) cost money, a cap on spending would significantly diminish the quantity of a candidate’s or a campaign’s speech and therefore undercut their ability to disseminate their message.<sup>14</sup> Applying its usual test for reviewing restrictions on First Amendment interests, the Court therefore required a showing that the law was narrowly tailored to meet a substantial or compelling state interest.<sup>15</sup> A majority of the Justices concluded that although the government did have a compelling interest in preventing corruption and the appearance of corruption, the spending limits passed by Congress did not meet the narrowly-tailored standard, because the Court did not see how unlimited spending left candidates or parties improperly indebted to their contributors.<sup>16</sup>

The Supreme Court took a much different approach to the law’s limits on contributions. Those restrictions, the Court found, impose a much smaller burden on speech than do spending limits, because a contribution’s speech value lies in its symbolic communication of support, something that “does not increase perceptibly with the size of [the] contribution, since the expression rests solely on the undifferentiated, symbolic act of contributing.”<sup>17</sup> The Court also concluded that unlimited contributions pose a much greater threat to the government’s interest in avoiding corruption. Allowing a candidate or lawmaker to accept huge sums of money from a small group of individuals, the Court said, truly did threaten to corrupt the government, or at least to create the appearance of corruption, by giving the impression that the candidate was indebted to wealthy contributors<sup>18</sup> -- something, it is worth noting, the current system does now through its soft money loophole. That is why, in the end, the Supreme Court upheld the law’s contribution limits while striking down its spending limits.<sup>19</sup>

What the Court in *Buckley* failed to realize, as our experience through the intervening years has shown, is that it is impossible to separate the threat posed to the democratic process by

uncontrolled spending from the threat of unchecked giving. The fact is that they are inextricably intertwined, just as are the laws of supply and demand. Indeed, as those of us who live in the system know, candidates and parties that are free to spend as much as they want will do so, especially given the spiraling costs of campaigns. So, faced with the dilemma of persistent demand for money and strict limits on its supply, candidates will feel great pressure to be aggressive and evasive in finding new sources of funding, to bend the law by exploiting loopholes and weakspots and perhaps even to break it on occasion. In that regard, the Court's spending/contributing dichotomy has increased the potential for misbehavior, just the opposite of the Court's intent.

The Committee's investigation of the 1996 Federal elections shows that ironic and unfortunate result to be so. One consequence of the relentless pressure the parties were under to raise vast sums of money was that they sometimes became careless in the way they went about their business. Both sides missed serious warning signs of wrongdoing, granted highly questionable favors, and lowered their standards of acceptable conduct. But these unintentional slips pale in comparison to the calculated efforts of both sides to evade, avoid, and subvert the laws regulating who can give what to whom.

No loophole has been more widely abused or more disastrous in its consequences than the soft money loophole, which also is part of *Buckley*'s unintended legacy of pushing parties to find additional sources of money. The soft money loophole dates to a 1978 FEC ruling allowing individuals, corporations and unions to avoid the law's limits on contributions if they give to party committees for non-candidate specific purposes, such as voter registration drives and party-building, rather than "with respect to any election for Federal office."<sup>20</sup> Standing alone, this loophole was problematic, because it provided a way for contributors and parties to vitiate the explicit limits the election law imposed on their contributions. But it was not until the soft money exception was wed to a second distinction articulated in *Buckley* -- one between "issue" advocacy and "express" advocacy -- that the national parties and their candidates were able to exploit the law's weaknesses to decimate its clear intent and debase the whole of the system.

The law the Court reviewed in *Buckley* limited what individuals could spend "relative to a clearly identified candidate."<sup>21</sup> The Court found this provision troubling, because it raised fears that the government would go beyond regulating commercials that express support for an individual candidate and would try to put limits on ads advocating a point of view on an important issue of the day. In particular, the Court worried that this provision would unfairly limit the speech of individuals and groups who did nothing more than point out a candidate's position on a particular issue while making a statement about the importance of their cause.<sup>22</sup>



The only way to get around this threat, the Court concluded, was to read the law narrowly to limit contributions only when they supported “communications that include explicit words of advocacy of election or defeat of a candidate.”<sup>23</sup> In a footnote to its decision, the Court explained that this standard would cover ads that included such words as “‘vote for,’ ‘elect,’ ‘support,’ ‘cast your ballot for,’ ‘Smith for Congress,’ ‘vote against,’ ‘defeat,’ ‘reject.’”<sup>24</sup>

Although there is nothing in the Court’s decision to suggest that this footnote defined the exclusive universe of candidate-focused speech Congress could regulate -- or that that narrow interpretation even applied to parties as opposed to outside groups -- the result of this decision was as predictable as the consequence of striking down spending limits. Just as the Court’s ban on spending limits inevitably spurred both parties and many candidates to push the contribution limits to their breaking point, it was only a matter of time before parties and outside groups would find the issue advocacy/express advocacy loophole and harness soft money to exploit it. And that is exactly what began to happen over the course of the last several national elections -- and what ultimately went out of control in 1996. Both parties wound up using tens of millions of dollars in soft money to help pay for ads that were clearly designed to aid a particular candidate but were nevertheless claimed to be legal because they did not invoke *Buckley*’s so-called magic words.

Thus, the post-Watergate law, as interpreted by the Court and the FEC, begat a devastating absurdity. The parties may use money supposedly not given in connection with a particular election for Federal office -- even though parties solicit the contributions explicitly to help their candidates -- to run advertisements that pretend not to advocate a particular candidate’s election or defeat -- even though any reasonable person would view those ads as promoting a specific candidate. From the beginning, this framework was ridiculous on its face; in 1996, it became scandalous in practice.

### **Activities of the Political Parties and Candidates During the 1996 Election Cycle**

My colleague Senator Pat Moynihan once used the term “defining deviancy down” to characterize the process by which abnormal forms of behavior come to be considered normal by the greater society. According to this theory, conduct that once was considered aberrant by society slowly gains a foothold of acceptability, which spreads throughout the culture and ultimately establishes itself as the new norm.

This process aptly describes what has happened to our politics over the last two decades, culminating in the breakdown of 1996. Otherwise good people, caught up in the urgency to raise huge amounts of money to fund their campaigns, gradually lowered the bar of acceptable behavior

until they no longer were able to see what they were doing as those outside of the system would -- and ultimately did. In this insular world, each side wound up pegging its ethical standards not to any independent or common norms but to what the competition was doing. And because the stakes were so high, it was an unquestioned assumption that if the other side was doing it, you had to do it as well -- the common justification being that one side would not “unilaterally disarm.” This was how candidates, campaign workers and party officials were transformed into mad hatters and how their standards sadly became as fungible as the various pots of money they amassed.

The use of the White House as a marketing tool during the 1996 election cycle provides a troubling case in point. No one would dispute that candidates, including the President and Members of Congress, can and should meet with their supporters -- financial or otherwise -- both to express gratitude and to motivate those friends to continue their support. Nor would anyone dispute that previous Presidents, presidential candidates of both parties, and Members of Congress have marketed access to themselves and their offices to raise campaign contributions. But in 1996, as part of the overall breakdown of the system, the White House was used more systematically and broadly than ever before to raise millions of dollars in large soft money contributions, with seemingly little consideration given to the troubling signal this would send to the broader public or the consequences it could have for our government.

This was particularly true of the White House coffees. The evidence the Committee collected regarding the many occasions on which attendance at a White House coffee and a large donation to the DNC temporally coincided is telling. A review of these events conducted by FBI Agent Jerry Campana found that 40 percent of the 532 people who attended 60 coffees sponsored by the DNC contributed to the DNC within one month of their coffee attendance, and 90 percent contributed either individually or through their businesses at some point during the 1996 election cycle.<sup>25</sup> Campana also provided the Committee with several examples of individuals contributing within one week of the coffees.<sup>26</sup> These statistics well support Campana’s conclusion that, although money may not have been raised *at* these coffees, it was certainly raised *from* them.<sup>27</sup>

The laws of the marketplace tell us that if you are selling something of value, there will be people ready to buy. The laws of politics tell us that if you are selling access, some of those willing to buy will not have the best motives. We therefore should not be surprised by the litany of opportunists who took personal advantage of the DNC’s willingness to use the White House as part of its fundraising strategy. Johnny Chung, for instance, was able to get a group of Chinese businessmen photographed with the President and First Lady -- a picture the businessmen later used, without the White House’s knowledge, to promote their company’s beer in China.<sup>28</sup> And Pauline

Kanchanalak successfully insisted on being allowed to bring Thai business executives with her to a White House coffee, despite DNC Finance Director Richard Sullivan's argument that bringing people who could neither lawfully support nor vote for the President to a meeting scheduled for the President's political and financial supporters would be inappropriate.<sup>29</sup>

Roger Tamraz's repeated presence at DNC-sponsored events provides perhaps the most damning evidence of how the White House was exposed to contributors on the make. Tamraz, an American citizen, sought the support of the U.S. government for his plan to build an oil pipeline in the Caspian Sea region. After government officials involved in the issue at the Energy Department and the National Security Council ("NSC") determined that Tamraz's plan did not serve U.S. policy and learned that Tamraz was falsely claiming U.S. government support for his project, the NSC recommended in the Summer of 1995 against any high level government contact with him.<sup>30</sup> Despite this advice, Tamraz, who began donating large amounts of money to the DNC around this time, was able to gain access on a number of occasions to the President and Vice-President through DNC events -- and even obtained help from DNC Chairman Don Fowler in trying to lift the bar on his interaction with high level officials.<sup>31</sup> Once again, the lure of big money led party officials into an inexcusable lapse in judgment.

I agree with the Minority Views that this extensive use of the White House during the 1996 campaign was neither illegal<sup>32</sup> nor without precedent -- the Minority Views cite ample evidence of previous Administrations engaging in similar behavior and of Republican Members of Congress using Congressional buildings for similar purposes. Nevertheless, I believe that it was highly improper, and more broadly speaking, it shows just how far the mad hatters succeeded in defining political deviancy down during the 1996 election cycle.

The extensive use of the White House as part of the DNC's fundraising strategy, of course, is far from the only example of this problem. Take, for instance, the case of Harold Ickes and Warren Meddoff, which was the genesis of the mad hatter metaphor. At a fundraising event in Florida shortly before the election, Meddoff handed a business card to President Clinton which allegedly contained a written message on the back that said Meddoff had an associate who wanted to donate \$5 million to the President's campaign.<sup>33</sup> This card found its way to Ickes, who subsequently contacted Meddoff by phone. In their conversation, Meddoff repeated his offer of a multi-million dollar contribution, and Ickes pointed out that the presidential public financing laws prohibited making such contributions to the President's campaign. Meddoff then asked Ickes to recommend other ways to help the campaign, suggesting that his associate would like to donate at least some of the money to tax-exempt groups. Ickes responded by sending Meddoff a list of such organizations.<sup>34</sup>

I agree with the Minority Views' conclusion that the evidence before the Committee does not support a finding that Ickes acted illegally in directing Meddoff to tax-exempt organizations. I also believe, however, that he did not act properly. Meddoff explicitly told Ickes that his goal was to give millions to the President's reelection efforts (circumventing the public financing law's limits on contributions to the presidential campaign) and to obtain a tax deduction for these plainly political contributions. Instead of willingly participating in this behavior, a governmental official in Ickes' high position should have told Meddoff that his request for assistance in avoiding the restrictions of the presidential public financing law and making political contributions that were tax-deductible was improper and refused to take part in it.<sup>35</sup>

Although, as explained above, the Committee's failure to sufficiently investigate Congressional and Republican activities leaves me unable to comment authoritatively on the scope of wrongdoing committed in that party's name, the investigation that was done makes clear that questionable activities were not confined to the Democratic Party. As discussed further below, for example, Ickes' actions have disturbing parallels in the behavior of a number of persons associated with the RNC who also improperly directed contributions to tax-exempt organizations.

And, as the Minority Views explain in detail, the one RNC-related event closely examined by the Committee shows that officials of that party were not immune to the devaluing of their public behavior. Officials of the RNC started the National Policy Forum ("NPF") in 1993 with a series of loans from the RNC to NPF that ultimately amounted to \$4 million.<sup>36</sup> By the Spring of 1994, NPF was in serious debt, mostly to the RNC, and the RNC, with critical elections ahead, wanted its money back.<sup>37</sup> RNC and NPF officials turned to, among others, Texas businessman Fred Volcansek to find a way for NPF to obtain money to repay the RNC.<sup>38</sup> Volcansek testified that he and others involved in seeking funds for NPF explicitly decided to explore foreign sources of funding, something that eventually led them to Hong Kong businessman Ambrous Young.<sup>39</sup>

They approached Young and his representatives about securing a bank loan for NPF and repeatedly explained to them that the purpose of the loan was, as talking points Volcansek prepared for RNC Chairman Haley Barbour put it, to "allow us to free up the money previously advanced to the NPF and make it available for the elections."<sup>40</sup> Barbour assured Young's attorney, Benton Becker, that the RNC would stand behind the loan in the case of an NPF default.<sup>41</sup> With this understanding of the loan, Young ultimately agreed to post \$2.1 million in collateral for NPF -- all derived from his Hong Kong corporation, albeit sent through that corporation's U.S. subsidiary.<sup>42</sup> Upon receipt of the loan, NPF transferred the bulk of its proceeds to the RNC.<sup>43</sup> When NPF subsequently defaulted on the loan, Barbour and the RNC refused to honor their commitment to stand

behind it, and Ambrous Young's company ultimately lost almost \$800,000.<sup>44</sup>

I cannot reach a conclusion as to whether this convoluted transaction, which, as a factual matter, led to the knowing infusion of foreign source money into the RNC's treasury at the direction of a foreign national, violated the letter of the law. It undoubtedly, however, violated the spirit of the law's prohibition on foreign nationals giving money to American campaigns, and in that sense it was plainly improper.

These episodes, taken collectively, highlight the connection between the illogical legal framework that grew out of the *Buckley* decision and the maddening behavior that resulted from the slow defining of political deviancy down. Simply put, these scandalous activities never would have happened if it were not for the powerful temptation of soft money and the concomitant motivation to find more and more of it to fund the parties' "issue advertising." It was for donations that dwarfed the average American's income that elected officials and party leaders were willing to sell their time to the opportunists who came to buy -- and in the process to compromise their standards and sully some of the nation's most respected institutions.

And, it is worth emphasizing, although the most outrageous incidents uncovered by the Committee may have involved Johnny Chung, Roger Tamraz and the like, the far more prevalent collection of big soft money donations came not from marginal hustlers like them, but from mainstream corporate and union interests that were indisputably interested in affecting the nation's policies and agenda. The amounts of soft money donated during the 1996 cycle are staggering: lawyers and lobbyists, for example, donated nearly \$8 million to the Democratic Party and \$1.5 million to Republicans; tobacco companies gave nearly \$6 million to the Republican Party and almost \$1 million to the Democratic Party; labor unions contributed almost \$9 million to the Democratic Party and about \$150,000 to the Republicans; securities and investment firms gave about \$10 million to the Republican Party and about \$9 million to the Democrats.<sup>45</sup> In total, the parties raised \$262 million in soft money during the 1996 campaigns.<sup>46</sup> And, in another blow to *Buckley*'s intellectual framework, it is clear that many, if not most, of those donations came from those seeking, not to engage in protected speech by expressing their ideological affinity with the parties, but rather simply to maintain their access to, and sometimes sway over, particular parties or candidates. How else to explain the fact that so many big givers were so generous with both parties at the same time?<sup>47</sup>

The bottom line is this: were it not for the lure of soft money and the relentless pressure to raise it, our nation's highest officials would have not been placed into the inappropriate situations in which the Committee too often found them. The President and the Vice-President, for example,

never would have felt the need even to consider personally phoning supporters for donations, and we likely never would have seen the White House and Capitol Hill conscripted into serving the fundraising goals of the DNC, the RNC, and the two major presidential campaigns.

Unfortunately, all indications are that the soft money-driven misdeeds of 1996 are just the beginning, because in spite of the Committee's investigation and the widespread media disclosures and condemnations, soft money fundraising is not just continuing, it is mushrooming. The recent statistics indicate we are being drawn into an ever-escalating money chase -- leaving parties and candidates all the more susceptible to the charge that they are improperly indebting themselves to wealthy contributors. The \$262 million in soft money raised by the national parties in the 1996 cycle is 12 times the amount they raised in 1984.<sup>48</sup> In the first half of 1997 alone, the two major parties raised \$35 million in soft money, or more than two and one-half times the almost \$13 million they raised in first six months after the last Presidential campaign.<sup>49</sup> We know the lengths to which the parties felt they needed to go to raise money during the 1996 campaigns. This continued exponential growth rate puts us all on notice of what is to come if we do not put a lid on soft-money contributions.

### **The Presidential Campaigns and the Abuse of Public Financing**

In addition to the many incidents of party fundraising activities that were improper or illegal, a broader systemic problem unique to the presidential campaign system also emerged during the Committee's hearings: the virtual destruction of the spirit and intent of the presidential public financing laws.

Pursuant to the Presidential Election Campaign Fund Act<sup>50</sup> and the Presidential Primary Matching Payment Account Act,<sup>51</sup> the taxpayers spent approximately \$236 million during the 1996 elections on the presidential campaigns.<sup>52</sup> The purpose of all of this taxpayer support was to level the presidential electoral playing field, to limit spending on the presidential campaigns, to keep presidential candidates from becoming full-time fundraisers and to limit the flow of private money into the presidential campaigns. The Committee's hearings vividly demonstrated that in 1996 the taxpayers did not get what they paid for, that the spirit of the agreements with them was grossly violated by both presidential campaigns, and that it is therefore critical to reexamine and reform the public funding laws before the presidential campaigns of 2000 begin.

**Legal Background.** The Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act give public subsidies to candidates for the presidency and

their parties at three stages of the presidential elections. First, the Treasury matches certain contributions raised by primary candidates who meet statutory eligibility requirements and who agree to limit their primary spending to an amount specified in the statute; eligible primary candidates may receive up to half of their spending limit in Federal matching funds.<sup>53</sup> During the 1996 primary elections, 11 candidates received a total of \$58.5 million in matching funds, and they had a spending limit of \$37 million.<sup>54</sup>

Second, political parties may receive a specified amount to fund their presidential nominating conventions. In exchange for this money, the parties agree not to spend more on their conventions than they receive in public funds.<sup>55</sup> The Treasury paid \$24.7 million for the two major party conventions in 1996.<sup>56</sup>

Third, major party nominees who agree to specified conditions are eligible for full public financing during the general election. Under 26 U.S.C. § 9003(b), major party candidates seeking public financing are required to “certify to the Commission, under penalty of perjury” that they and their campaign committees will neither spend more on their campaigns than the amount allotted in public funds, nor accept any contributions to fund any expenditures to further their election.<sup>57</sup> In 1996, \$152.7 million went to three nominees for the general election, including approximately \$62 million each to President Clinton and Senator Dole (the rest went to minor party candidate Ross Perot, who was eligible for partial public financing for his general election run).<sup>58</sup>

Congress enacted this public financing system for a specific and well-defined purpose: to level the electoral playing field and to remove presidential candidates from the potentially corrupting influence of non-stop fundraising. As the Senate Rules Committee put it in 1974, these laws aim to stop presidential candidates from having “to devote too much time to endless fund raising at the expense of providing competitive debate of the issues for the electorate,” and to eliminate the reliance of presidential candidates on wealthy contributors.<sup>59</sup>

In contrast to its views on the election laws’ mandatory spending limits, the Supreme Court in *Buckley* viewed this system of voluntary spending limits in exchange for public financing as perfectly permissible under the First Amendment. As it explained:

Congress may engage in public financing of election campaigns and may condition acceptance of public funds on an agreement by the candidate to abide by specified expenditure limitations. Just as a candidate may voluntarily limit the size of the contributions he chooses to accept, he may decide to forgo private fundraising and

accept public funding.<sup>60</sup>

**Abuses of the System.** Both of 1996's major party candidates accepted public financing and pledged in return to limit their spending to \$37 million during the primary season and, during the general election, not to make more than roughly \$62 million in expenditures “to further [their] election” or to seek contributions to fund such expenditures.<sup>61</sup> As the Committee’s hearings showed (and as detailed in Chapters 32-33 of the Minority Views), the candidates effectively ignored their pledges. Instead of curtailing their fundraising and limiting themselves to spending the amount they agreed to, both major party candidates continued raising and spending massive quantities of money by using the party machines as appendages of their campaigns in what amounted to a back-door effort to evade both the fundraising and spending limits they had pledged to abide by.

The presidential candidates engaged in a seemingly never-ending quest for campaign money throughout the entire election period. Indeed, they were involved in exactly the pattern of behavior Congress aimed to stop when it enacted public financing for the presidential campaigns: the candidates wooed wealthy contributors and appeared over and over at events open only to those who contributed \$5,000, \$10,000, \$50,000 and more.

The abuses on the spending side were just as bad. Primarily by running what they called “issue” ads through their parties, both major party candidates were able to use the money they raised to eviscerate the spending limits they agreed to accept. Although couched as ads discussing “issues,” the text of these advertisements, as well as the role the candidates played in producing them, make clear that they aimed to “to further the election” of the presidential candidates -- precisely what the public financing laws were supposed to proscribe.

Evidence reviewed by the Committee, for example, showed that the President and numerous other Administration officials were heavily involved in determining the details of the DNC’s media campaign. The President and some of his senior advisors had weekly strategy meetings with the November 5 Group -- the name used by a group of consultants that included campaign consultant Dick Morris, pollsters Penn and Schoen and others -- to discuss campaign strategy. According to Harold Ickes, the Wednesday evening group reviewed “most, if not virtually all” of the DNC’s soft money advertising, and members of the group, including the President, sometimes commented on the ads and suggested changes to the text. In fact, as Harold Ickes testified, the ads did not run until the Wednesday night group approved them.<sup>62</sup>

The Dole for President campaign also played a significant role in the RNC’s issue ad



campaign, particularly during the period after the Dole campaign exhausted its permissible primary season spending but before it received its \$62 million in general election funds. As the Minority Views explain in Chapter 33, Dole campaign personnel were involved in the production of RNC issue ads, and Senator Dole himself acknowledged his campaign's role in the party issue ads -- and the role the party issue ads played in his campaign.<sup>63</sup>

In short, the Committee's investigation left no doubt that the presidential public financing laws were widely evaded in 1996. And, again, because of the soft money and issue advocacy loopholes, this all appears to be legal, even though, under 2 U.S.C. § 441a(d), the parties are supposed to spend only a limited, specified amount in coordination with their candidates to advance those candidates' campaigns. As explained above, the parties and the campaigns argue that anything that does not use *Buckley's* magic words is not express advocacy, and that anything that is not express advocacy is not "for the purpose of influencing any election for Federal office" and therefore falls outside of the limits imposed by the campaign finance laws, including those established in Section 441a(d) for coordinated expenditures. As a result, despite the fact that the campaign message of these party issue ads was as clear to anyone who views them as it was to the candidates who helped produce them, the parties and candidates argue that it was perfectly permissible for the candidates to be involved in the development and running of those ads, without limit.<sup>64</sup>

However troubling the apparent legality of coordinating unlimited spending on issue ads is in general, it is beyond acceptability in the specific context of the presidential campaigns. If the presidential candidates truly can use the party apparatuses to raise unlimited soft money and then spend it to further their campaigns by running party issue ads whose content they controlled, then the taxpayers threw away \$236 million in presidential campaign subsidies in 1996. This is a huge and unacceptable loophole in the presidential campaign laws, and I hope Congress will adopt legislation to close it.

By banning soft money and limiting the sources of funding available for running advertisements using a candidate's likeness or name within 60 days of an election, S. 25, the proposed McCain-Feingold campaign finance reform legislation, would go a long way toward preventing these abuses. But because, as explained above, the Supreme Court has explicitly upheld Congress's ability to impose even greater restrictions on those candidates who accept public financing, we also should consider going beyond S. 25's proposals for publicly-funded presidential candidates.

I therefore have proposed legislation (S. 1666) that would, among other things, more explicitly prohibit presidential candidates who accept public financing from doing what the law long

has intended to keep them from doing. My bill would effectuate the original goal of keeping the presidential candidates from spending too much time fundraising by banning them from raising soft money throughout their campaigns and any money at all after they are nominated, and it would prevent them from using the parties to circumvent spending limits by prohibiting their involvement in any party spending -- for issue ads or anything else -- that exceeds the amount Section 441a(d) explicitly authorizes presidential candidates and parties to spend together. I will urge my colleagues to support this proposal, so that the taxpayers can be assured that the hundreds of millions of dollars they spend to keep their presidential elections clean actually serve the purpose for which they are given.

### **The Abuse of Tax-Exempt Organizations**

An equally troubling phenomenon in the 1996 elections -- one that the Committee regrettably failed to adequately investigate or to explore in public hearings -- is the improper, and possibly illegal, use of tax-exempt organizations to circumvent campaign finance laws and to carry out campaign-related activity. Investigations conducted by the Minority and additional evidence uncovered by journalists strongly suggest that activities involving a wide array of tax-exempt organizations, sometimes in conjunction with the political parties, violated at least the spirit of both the election laws and the tax code. The public would have greatly benefited from a full and open airing of the stories of these organizations' activities, and I regret that did not happen. The Minority Views extensively recount the troubling activities uncovered during the investigation. I highlight a few here.

**Legal Background.** The Federal Election Campaign Act ("FECA") limits both the amounts and the sources of funds that may be contributed to candidates and political parties in connection with Federal elections, prohibiting, for example, such contributions from corporations, labor unions or foreign nationals who are not lawful permanent residents of the United States.<sup>65</sup> This law also imposes strict reporting and disclosure mandates on organizations involved in Federal elections, requiring them to provide the public with a detailed accounting of the contributions they receive and the expenditures they make.<sup>66</sup> The purpose of these laws is, among other things, to ensure honest elections by limiting the sources of campaign funds and by mandating that the public be made fully aware of both the identity of those trying to influence its votes and the financial activities of the political parties.

The tax code, for its part, circumscribes the type of political activities in which organizations with tax-exempt status may engage. Groups with Internal Revenue Code Section 501(c)(3) status -- which confers not only tax-exempt status but also the added ability to receive tax-deductible

contributions -- may not intervene in any political campaign on behalf of or in opposition to any candidate.<sup>67</sup> The tax code permits organizations with Section 501(c)(4) status -- which qualify for tax-exempt status, but may not receive tax-deductible contributions -- to engage in election advocacy as long as such efforts do not make up the group's primary activity (election law restrictions, however, limit these organizations' ability to engage in election advocacy).<sup>68</sup> In addition, the tax code does not permit contributions to political parties or candidates to be tax deductible.

These provisions reflect Congress' judgment that although taxpayers should subsidize the activities of groups working in the public interest by granting them favored tax status, that subsidy should not extend to organizations that focus primarily on political campaign work, unless those organizations are willing to comply with the regulation of the election laws.<sup>69</sup> Unfortunately, the scope of the activities some of these groups engaged in during the 1996 elections went far beyond what Congress intended, and both the tax-exempts themselves and the political parties used these organizations in ways that the election laws and the tax code were enacted to prevent.

**Americans for Tax Reform.** The RNC, for example, appears to have worked with the 501(c)(4) organization Americans for Tax Reform ("ATR") in a successful effort to circumvent election law restrictions on the party's own activities. As recounted more extensively in Chapter 11 of the Minority Views, documents obtained by the Committee show that the RNC infused ATR with over \$4.5 million in the weeks leading up to the 1996 election. The RNC sent that money to ATR in installments provided just in time for ATR to pay its bills for a direct mail and phone bank campaign involving four million calls and 19 million pieces of mail explicitly disputing the Democrats' position on Medicare as it related to the November 5th election. In one case, the RNC's money arrived in ATR's bank account just two hours before ATR paid one of its bills for the direct mail campaign. Although the timing of these transfers alone provides powerful evidence of the RNC's involvement in ATR's partisan advocacy efforts, when taken together with an RNC document turned over to the Committee that refers to ATR's yet-to-be commenced direct mail effort, there can be little doubt that the RNC was directly involved in devising and implementing ATR's multi-million dollar campaign.

This activity is troubling for several reasons. FEC regulations require the RNC to fund issue advocacy efforts like the one ATR engaged in with a specified percentage of Federal, or hard, dollars<sup>70</sup> -- money that is more difficult to raise than the soft money the party sent to ATR. Thus, if the RNC in fact did use ATR to carry on these activities on its behalf, then the RNC's funding of these efforts entirely with soft money effectively thwarted FEC rules limiting the party's use of that money.

Moreover, the RNC's complicity in ATR's activities also is completely at odds with the purpose of the election laws' disclosure requirements: to let voters know who it is that is trying to influence their votes, how much those persons and entities have spent and where that money came from. By funneling money through an outside group like ATR, the RNC was effectively able to hide the fact that it was behind phone calls received by four million Americans and letters sent to 19 million potential voters -- all aimed at promoting the party's cause. Recipients of material funded by the RNC were left with the impression that a disinterested organization, not the party itself, was behind the activities. In fact, leaving this false impression may have been the very reason for the RNC's generosity toward ATR. An article in the February 9, 1997 edition of *The Washington Post* quotes then-RNC Chairman Haley Barbour as observing that outside groups like ATR "have more credibility" in pushing a political message than do the parties.<sup>71</sup>

My concern over the RNC-ATR connection is not limited to its election law ramifications; this activity may also have brought ATR out of compliance with the tax code. As a 501(c)(4) organization, ATR may engage in some limited political campaign activities as long as the group's primary purpose is not to intervene in political campaigns on behalf of or in opposition to any candidate for public office.<sup>72</sup> In this case, the extent of its apparent coordination with, and advancement of, the RNC's goals suggests that ATR may have crossed the legal line. Indeed, as the Minority Views explain, an analysis of ATR's bank records reveals that the RNC's donations comprised more than two-thirds of ATR's 1996 income, and activity carried on with the RNC's money formed the lion's share of ATR's pre-election activity. All this means that the taxpayers were involuntarily subsidizing undisclosed partisan political activity in violation of the clear intent of our tax laws, since ATR, as a 501(c)(4) organization, is freed from a portion of an otherwise-existing tax obligation.

**American Defense Institute.** ATR was not the only tax-exempt group that benefitted from the RNC's fundraising. According to press reports and documents turned over to the Committee, the RNC also steered large amounts of money to the American Defense Institute ("ADI"), a 501(c)(3) organization that runs a voter turnout program for military personnel, who tend to vote Republican.<sup>73</sup> The October 23, 1997 edition of *The Washington Post* reported that in September 1996, ADI returned \$600,000 donated to it by the RNC because, according to the group's president, "we didn't want to be controversial and we had funding from other sources."<sup>74</sup> However, as the *Post* reported, that money was not returned until several days after *the RNC itself* sent checks totaling \$530,000 from six donors to ADI.<sup>75</sup> Around that time, RNC Chairman Haley Barbour also apparently solicited \$500,000 from the Philip Morris Companies Inc. for ADI.<sup>76</sup> The size of these donations and the fact that the RNC itself took the time to solicit, collect and send these contributions to ADI strongly

suggest that the RNC believed that ADI's activities would inure to its partisan benefit. The timing of these transactions, moreover, arguably gives rise to an inference that the RNC and ADI substituted the donors' money for the RNC's to avoid publicizing the fact that the RNC was the source of ADI's funding -- that is to avoid disclosure requirements. Moreover, all of those donors could take a tax deduction for their RNC-requested contributions to ADI, thus forcing taxpayers to subsidize donations to a political campaign in violation of the clear intent of our tax law.

**Vote Now 96.** On the Democratic side, the Committee heard testimony that Vote Now 96, the fundraising arm of the 501(c)(3) get-out-the-vote organization Citizens Vote, Inc., sought and received help from the DNC in raising money for its work, presumably because these organizations were working to raise turnout among groups who tend to vote Democratic. I have already discussed the most prominent example of this activity -- then-White House Deputy Chief of Staff Harold Ickes directing Warren Meddoff to Vote Now 96 and other tax exempts in response to Meddoff's request for advice as to how his associate could contribute to the President's re-election effort and take a tax deduction for part of it.

Information gathered during the Committee's investigation suggests that the DNC directed other donors to this group as well, apparently as a means of avoiding otherwise applicable FECA requirements. For example, the DNC apparently steered to Vote Now 96 a \$100,000 contribution from Duvaz Pacific Corporation, a Philippines company. The DNC directed Duvaz Pacific to Vote Now 96 after it learned that the company's head, who attended a DNC fundraiser, could not legally donate to the DNC itself because of her foreign citizenship.<sup>77</sup> On another occasion, a \$25,000 contribution from Shu-Lan Liu and Yun-Liang Ren, rejected by the DNC because of the donors' foreign citizenship, subsequently found its way to Vote Now 96.<sup>78</sup> The November 22, 1997 edition of *The Washington Post* further reported that the DNC included in a White House dinner for its top donors Gilbert Chagoury, who reportedly gave \$460,000 to Vote Now 96 at the request of a DNC official; Mr. Chagoury's foreign citizenship status prevented him from contributing directly to the DNC.<sup>79</sup> According to the deposition testimony of former DNC fundraiser Mark Thomann, the DNC may have credited fundraisers the same for some donations directed to Vote Now 96 as for contributions solicited for the party,<sup>80</sup> and DNC Finance Director Richard Sullivan testified that DNC Chairman Don Fowler had asked him to raise money for Vote Now 96.<sup>81</sup>

These activities -- a political party soliciting money from persons ineligible to give to the party and offering party favors in return -- are wrong. Moreover, insofar as the contributors were American taxpayers, they were given deductions that amounted to additional, involuntary subsidies by the rest of the nation's taxpayers, in violation of at least the spirit of our tax laws.

**Citizens for Reform.** A number of tax-exempt groups -- none of which registered with or disclosed their activity to the FEC -- directly and substantially intervened in elections by running television advertisements the groups claimed were intended only to discuss issues but that, in fact, clearly were aimed at influencing specific elections. According to a study by the Annenberg Public Policy Center, for example, Citizens for Reform, a 501(c)(4) organization, ran \$2 million worth of ads during October and November of 1996 in Congressional districts around the country.<sup>82</sup> In one district, the group ran an ad with the following message:

Who is Bill Yellowtail? He preaches family values, but he took a swing at his wife. And Yellowtail's explanation? He 'only slapped her.' But her nose was broken.<sup>83</sup>

Any reasonable person would view this ad as trying to convince voters to reject Yellowtail's candidacy -- not as discussing the issue of domestic violence or any other issue. Moreover, published reports and testimony and documents obtained by the Committee suggest that Citizens for Reform became active only shortly before the 1996 campaign, had no history of any interest in domestic violence and did not run ads anywhere else dealing with domestic violence. Indeed, according to the May 5, 1997 edition of the *Los Angeles Times*, when asked whether Citizens for Reform would attack any Republicans who may have engaged in domestic violence, the group's president responded "it's not up to us to do the job of people who have a liberal ideology."<sup>84</sup> Despite these facts, and the added fact that the overwhelming majority -- if not the entirety -- of this group's activities appear to have focused on helping to elect Republican candidates, the group never registered with, or disclosed its activities to, the FEC. In addition, it applied for and received 501(c)(4) status, which would be lawful only if it were primarily engaged in non-campaign related activities.

All of these activities by tax-exempt, presumably non-partisan corporations cry out for remedial action by Congress. The McCain-Feingold proposal (S. 25) partially addresses these problems by prohibiting party organizations from soliciting contributions for, or directing them to, tax-exempt entities. I have proposed additional legislation (S. 1666) to further address these abuses. Premised on the same idea as the amendments to the Presidential public financing laws noted above, my bill would make more explicit what the law always has intended: that organizations that wish to receive the public subsidy of tax-exemption must curtail their involvement in campaign-related advocacy. In particular, I am proposing to prohibit such organizations from coordinating any expenditure with parties and candidates and to forbid them to run advertisements or send direct mail identifying a candidate within 60 days of a general election or 30 days of a primary election.

Like the public financing amendments discussed above, I believe these proposals would pass

constitutional muster, because the Supreme Court already has upheld similar restrictions on the activities of tax-exempt organizations. As the Court explained in *Regan v. Taxation with Representation of Washington* when upholding against First Amendment challenge a provision that prohibits substantial lobbying by 501(c)(3) organizations: “[b]oth tax exemptions and tax-deductibility are a form of subsidy that is administered through the tax system,” and by restricting the lobbying activities of 501(c)(3)’s “Congress has merely refused to pay for the lobbying out of public monies.”<sup>85</sup>

### **Vice-President Gore and the Hsi Lai Temple Event**

I must take issue with the Majority’s comments on Vice-President Gore’s attendance at the Hsi Lai Temple’s April 29, 1996 luncheon in Hacienda Heights, California. The Majority devotes a chapter to the Temple event and implies that the Committee has evidence suggesting that Vice-President Gore was associated with, or should at least have been cognizant of, the wrongdoing that occurred in connection with the Temple event. I agree fully that the evidence before the Committee strongly supports the allegation that Temple officials and the event’s organizers, Maria Hsia and John Huang, engaged in activities that violated applicable laws. The Vice-President, however, has stated that he had no knowledge of, and was certainly not involved in, any improprieties that may have occurred in connection with the Temple event. My review of the evidence leaves me without any doubt that that is the truth.

### **The China Plan**

Another matter on which I would like to add my comments is the so-called China plan. As the Majority and Minority Views explain, non-public evidence before the Committee revealed that in 1995 officials within the government of the People’s Republic of China (“PRC”) crafted a plan aimed at improving their influence in American government. This plan included activities that amounted to legal lobbying and may also have included activities that could have resulted in money going into Congressional races in 1996, although there was no direct evidence that the plan aimed at putting money into the 1996 presidential race.<sup>86</sup> This presented one of the stranger ironies of this investigation. The Committee had evidence of a Chinese government plan to influence Congressional races, but found little evidence of money connected to the PRC actually entering Congressional campaigns. On the other hand, the Committee had no direct evidence that the China plan aimed at putting money into the presidential race, but then received considerable evidence of contributions to the 1996 presidential campaigns, particularly the Democratic campaign, from people or businesses with close links to the Chinese government or businesses controlled by the Chinese government.

The Committee heard testimony, for example, that the Lippo Group, John Huang's former employer and an entity with whose employees and officials Huang retained contact during his tenure at the DNC, has substantial joint business ventures with the Chinese government.<sup>87</sup> A number of these ventures are with China Resources, a government-owned company the Chinese government reportedly often uses as a front through which to run espionage operations.<sup>88</sup> In late 1992, China Resources purchased 15 percent of Lippo's Hong Kong Chinese Bank, a share it ultimately increased to 50 percent in mid-1993.<sup>89</sup> Since that time, Lippo and China Resources have engaged in dozens of joint ventures in China.<sup>90</sup> In 1993, Huang apparently arranged for the head of China Resources, Shen Jueren, to meet with Vice-President Gore's Chief of Staff.<sup>91</sup> Moreover, as the Majority reports, non-public evidence presented to the Committee demonstrates a continuing business-intelligence relationship between the Riadys and the PRC intelligence service, although that evidence does not reveal any direct connection between the PRC intelligence service and the Riadys' U.S. political activity.

As the Majority Report also states, the Committee received non-public evidence suggesting that two individuals, Ted Sioeng and Maria Hsia, had direct contact with the government of the PRC and may in fact have undertaken actions on behalf of that government, although the information I saw regarding Hsia did not include any direct evidence linking her U.S. political activities during the 1996 elections to the Chinese government. In 1996, Sioeng, his daughter, or his daughter's business were responsible for contributions to the DNC, the National Policy Forum and two California state Republican campaigns. Hsia is a long-time Democratic fundraiser who worked closely with John Huang in raising money for the 1996 Democratic presidential campaign.

The Committee also heard testimony linking Charlie Trie and Ng Lap Seng, Trie's business partner and apparent benefactor, to Wang Jun.<sup>92</sup> Wang is the son of China's former Vice Premier and the Chairman of two important Chinese government-owned firms, the China Poly Group and the Chinese International Trade and Investment Corporation ("CITIC").<sup>93</sup> The exact nature of Trie and Ng's relationship with Wang is not clear, but on at least one occasion, Trie sought and received permission to bring Wang to a White House coffee with the President.<sup>94</sup> The Committee also heard testimony that Ng reportedly was a member of the Chinese People's Political Consultative Conference,<sup>95</sup> a group of several thousand delegates that serves as a channel through which political parties and other organized groups can share their views with Chinese government officials.<sup>96</sup>

We know that the people with these contacts with the PRC -- John Huang, the Riady family, Charlie Trie, Maria Hsia and Ted Sioeng -- were responsible for raising and contributing substantial sums of money to American national political parties and campaigns.



While much of this evidence is circumstantial and therefore does not justify a definite conclusion that the China Plan aimed at, or in fact resulted in, contributions going from or at the direction of the Chinese government into the 1996 American Federal elections, it leaves me suspicious. The evidence before the Committee puts many troubling dots on the board, but ultimately does not connect them in a way that enables us to see a clear picture of what happened. For me, the blurred result is nonetheless very unsettling.

It is important to note that, aside from the seven Members of Congress informed by the FBI that they may have been targets of China's improper efforts to gain influence with Congress, there was absolutely no evidence presented to the Committee -- public or non-public -- to even suggest that any American elected official or leader of a national political party had any knowledge of the China plan or any contributor's or fundraiser's possible connection to it.

By alleging a China plan so dramatically on the opening day of the hearings, and then suggesting that the plan played a role in many of the activities to be reviewed by the Committee, the Majority created a distraction and established a very difficult standard for public conclusions about the Committee's work, because the existence of a China plan could be shown conclusively only through non-public information, which necessarily could not be shared fully with the public. That remains the case.

Nevertheless, this is an important matter. Intelligence and law-enforcement agencies should continue to monitor and investigate this matter, and if firm evidence arises supporting the claim that the Chinese government or any other foreign government actually did implement a plan to illegally try to influence our nation's policies through illegal campaign contributions, those implicated should be prosecuted, and our relationship with that government should be affected.

In the end, it is most important that we not overlook the real significance to our Committee's investigation of the China plan and of illegal foreign contributions in general. The fact that a foreign government, foreign companies, or foreign individuals concluded that money has become so important in American politics that they could buy their way to access to the top of our government to influence our policies towards them, thereby diminishing our national strength and independence, is a severe indictment of our campaign finance system and a compelling argument for reform.

### **The Legacy of the Investigation: The Law's Limitations**

Much of the Committee's investigation was driven by a singular question: were laws broken?

Most every incident the Committee examined was viewed through a legal lens, and this focus led to many bitter, largely partisan disputes over what the facts were and what the law said about the facts, disagreements that live on in the often widely-diverging Majority and Minority views.

In devoting so much time to these fights, we succumbed in some respects to the same trap that the mad hatters did, which was to equate the law with morality and thus lower the standards we use to judge ethical conduct to the legal limit. There is in fact a crucial distinction between them, one that matters not just to students of ancient philosophy but to us as policy-makers and political leaders who are grappling today with how we can repair our badly broken political system.

The truth is that the law, while serving as an expression of our values, cannot compel moral behavior. It can stake out ethical boundaries, point us in the right direction, and punish behavior that is wrong, but its reach is limited. We cannot ever fully write into law what every citizen has a right to expect from their representatives -- that those seeking to write the rules for the nation will respect them, rather than search high and low for ways to evade their requirements and eviscerate their intent; and that those who have sworn to abide by the Constitution will honor the trust and responsibilities the Constitution places in their hands, rather than cater to the special interests depositing soft money in their pockets.

For our democracy to function, then, we must rely on a common core of values above and beyond what the law requires, a system of moral checks and balances comparable to the political ones built into the Constitution. These values, and the traditional American behavioral norms we have internalized in concordance with them, have long insulated us from the temptations that are endemic to politics and to which we are all vulnerable. But over the last several years, as the pressure to raise huge amounts of money helped to define political deviancy down deeper and deeper, that moral immune system was severely weakened, leaving the mad hatters at the mercy of their lesser instincts and prone to justify just about any means to reach the end of winning.

The 1996 election cycle provides ample evidence of the threat this vulnerability poses to the legitimacy of our government. While the record the Committee compiled did not show that any U.S. policy -- foreign or domestic -- was altered by any of the hustlers or opportunists who bought access to some of our top leaders, we cannot deny that the potential existed for this kind of abuse. Nor can we ignore the dangers inherent just in the appearance of this kind of influence peddling and what it communicated to the American people. Consider some of the comments we heard from the unsavory characters who sought to purchase their way into our political system. Johnny Chung gave this blunt assessment: "I see the White House is like a subway: You have to put in coins to open the gates."<sup>97</sup>

Or, as Roger Tamraz said when explaining how his contributions helped him get the access to high officials through the DNC that he was denied by policy makers: “if they kicked me from the door, I will come through the window.”<sup>98</sup> What he really meant was buy his way through the window.

Hearing these comments, the average American would have every reason to suspect the worst about their government and the leaders running it and to question just whose interests are being served. And that may in fact be the most mortal consequence of the moral breakdown our politics have suffered -- the damage it does to public confidence and trust in the democratic process. Even if we take away the Johnny Chungs and Roger Tamrazes and the other shakedown artists, we are still left with a system that bends over backwards to indulge big soft-money donors and their special interests and thereby suggests to the general public that power will be exercised first and foremost for those who give top dollar.

*The Washington Post* ran an important five-part series two years ago that documented the deep feelings of mistrust and alienation many Americans feel toward their government and their elected leaders. One of the most striking findings was that the percentage of Americans who say they trust the Federal Government all or most of the time dropped from 76 percent in 1964 down to 25 percent by the beginning of 1996.<sup>99</sup> Since then, a number of other polls have confirmed the *Post*'s conclusions. For instance, a University of Michigan survey after the 1996 elections found that just 32 percent of the public trust in government to “do what is right” most of the time.<sup>100</sup> And a study done by the Roper Center found that when asked whether elected officials have honesty and integrity, nearly three-quarters of the public said no.<sup>101</sup>

The polls we have seen since the campaign finance system broke down completely in 1996 indicate that the scandal has made things even worse, hardening the profound cynicism that already exists. Gallup released the results of a damning survey in October 1997 which found that only 37 percent of Americans believe the best candidate usually wins elections, while 59 percent believe elections are generally for sale. That same survey found that 77 percent of Americans believe that their national leaders are most influenced by pressure from their contributors, while only 17 percent believe we are influenced by what is in the best interests of the country. And just about half of the respondents said they believe the President is willing to change government policies in exchange for donations.<sup>102</sup>

One of the most powerful indicators of the public's lack of confidence is its reaction to campaign finance reform itself. When asked whether they believed that major changes in the campaign finance laws could succeed in reducing the corrupting influence of big money in our

politics, nearly 60 percent of Americans said special interests will always find a way to maintain their power in Washington no matter what laws we pass.<sup>103</sup>

That hopelessness is undoubtedly why we have not heard an outcry from the public for major campaign finance reform. Without such a demand, that reform probably will not happen, for although those in power today often complain about the current system, they clearly benefit from it. The first task for reformers in both parties, therefore, is to raise the level of public trust and confidence to the point where the American people believe that campaign finance reform will actually make a difference so they will in turn demand it from their elected representatives in Washington. In short, the ball is now in Congress's court.

## **Conclusions and Recommendations**

Chairman Thompson wisely observed during the hearings that “if the interpretation is that this is legal and this is proper, then we have no campaign finance system in this country anymore.”<sup>104</sup> He was referring to the end run around the public financing laws that both major presidential campaigns successfully executed in 1996, but he might as well have been talking about the whole gamut of abuses both parties committed. The truth is that we have no effective system, just systemic failure.

Unless something is done soon to radically recast our entire campaign finance system, we can count on that failure to continue well into the next century. Based on the excuses the Committee heard in testimony to justify much of the outrageous behavior described above, we can probably expect even more surreal images than money being raised from a Buddhist temple, even more hustlers trying to put their change into the subway turnstile at the White House gate, and even more alienation and apathy from the people we are elected to serve.

Fortunately, there are a number of options for achieving such reform. One course we should pursue is to ask the Supreme Court to reconsider its decision in *Buckley*. We need to put before the Court the demonstrated detrimental impact the unlimited spending they permitted and the narrow definition of “express advocacy” they promulgated have had on our campaign system. We need to convince the Court that spending limits are constitutionally justified because unlimited spending *does* pose a serious threat of corruption and that the need to avoid that threat is so compelling that spending limits are warranted.

In the meantime, though, those of us in Congress seeking campaign finance reform have two other options. One is to push to amend the Constitution to overturn *Buckley* -- an effort I have

supported, but that has not yet found sufficient votes in Congress.<sup>105</sup> The other is to continue to forge ahead and enact reforms that will survive constitutional scrutiny under *Buckley* and its progeny. The McCain-Feingold proposal (S. 25) laudably seeks to do this, by, among other things, proposing a ban on soft money and better defining the types of candidate-oriented advertisements that are covered by the election laws. Although the record created by the Committee's hearings recently helped that bill obtain the votes of a majority of the Senate, an anti-reform minority filibustered the bill, and so kept it from passing.<sup>106</sup>

Those of us in favor of comprehensive reform should continue fighting to obtain additional support for that bill. In the meantime, though, we should consider carving out discrete parts of that and other proposals in an attempt to enact at least incremental reform this year. I hope, for example, that we have the courage to take the logical first step of closing the soft-money loophole. Not only would this almost certainly meet Constitutional muster under the *Buckley* framework, which upholds limits on campaign contributions, it also would have the broad support of the American people. The October Gallup poll I cited above showed that the public overwhelmingly favors clamping down on soft money.<sup>107</sup> At a minimum, we should enact non-controversial reforms, like banning all fundraising in Federal buildings, making clear that foreign soft money donations are illegal, and specifying that the ban on making contributions in the name of another applies to soft money donors. It is hard to imagine that anyone would oppose closing these loopholes.

Another worthy avenue of reform to consider is to better define the scope of permissible activities for those accepting public subsidies like financing for presidential candidates or tax-exemption for outside groups. As explained above, although *Buckley* generally limits Congress' ability to impose mandatory restrictions on the spending and the speech of those involved in the political and campaign arenas, it and other decisions have made clear that Congress may impose such restrictions as a condition for receiving government subsidies, like public financing in the case of the presidential campaigns and tax-exemption in the case of tax-exempt organizations.<sup>108</sup> Congress should use its authority to impose such restrictions to help better ensure that presidential candidates and tax-exempt organizations conform their activities to what they are supposed to be doing to receive those subsidies.

As we pursue this agenda, we would be wise to remember what made the mad hatters mad in the first place. They lost their heads largely because they lost sight of their values. More to the point, they lost sight of our values, the common principles that unite us as Americans and that have served as the foundation of our democracy since its inception -- chief among them the ideal of equal access to and participation in our government that the Constitution proclaims and respect for the rule

of law that the Constitution demands.

The breakdown in our political values is akin to a much broader problem in our society that I have raised concerns about in recent years -- the growing sense that our popular culture has disoriented our common moral compass. This is particularly so because of the increasingly omnipresent and superpowered entertainment industry, where anything seemingly goes, no matter how it affects our country, so long as it increases revenues. In the intense competition for higher television ratings or record sales, many good people working at great and honorable companies have lowered themselves into mainlining extreme violence, sexual promiscuity, and gross vulgarity into our children's minds, and have lowered us all by extension. All the while, they defend their behavior by waving the First Amendment as if it were some kind of Constitutional hall pass, where having the right to speak freely justifies any and all behavior exercised under it, no matter whom it hurts. This is what the Reverend Billy Graham meant when he said -- with such moral force -- that the people who run the culture often "have confused liberty with license."<sup>109</sup>

In that sense, the similarities between what has happened within our culture and within our polity are striking, and in some respects instructive. Both are plagued by enormous competitive pressures, the powerful temptation of big money, and a reflexive reliance on the right of free speech to defend the unseemly and the corrosive. In Hollywood, the thinking goes, if I can say it or portray it, and people will pay to see it, then I will because I will succeed. In Washington, the analog is, if the law does not clearly prohibit me from doing it, then I must or I will lose. Either way, the resulting behavior often drags down our common standards and weakens our moral safety net.

Our experience with the culture wars tell us that it is unrealistic to expect the political mad hatters to voluntarily change their behavior and lift up their standards. In the case of the degrading daytime television talk shows, for example, it took persistent public pressure -- a revolt of the revolted -- to shame the producers and sponsors of at least some of these programs and force them to begin to clean up their act. That is why it is imperative to fundamentally change the way our political process works to do whatever we can to quash the temptation to stray from our basic core values in the first place -- in other words, to silence the siren's call of cash. Our best chance to achieve that goal is to push for comprehensive, systemic reforms that will not just toughen enforcement of existing law and eliminate the most glaring loopholes but drastically reduce the insatiable demand for big money that begat the mad hatters.

The Committee's investigation started us down that road by showing the American people a deeply disturbing reflection of what has become of our politics, how out of control and out of touch

with our values the campaign fundraising mad hatters have become. We have met the enemy, and it is us, which also means that we have it within ourselves to change. Now we must find the will to do so.

## ENDNOTES

1. Harold Ickes, Oct. 8, 1997 Hrg. p. 102.
2. July 8, 1997 Hrg. p. 54.
3. *Id.* at 53, 55.
4. In its initial funding resolution, the Governmental Affairs Committee unanimously decided to investigate both illegalities and improprieties in the 1996 elections. The Rules and Administration Committee, which reviews all such resolutions, then sought to confine the Governmental Affairs Committee's mandate to investigating solely illegal activities, but the full Senate wisely reversed that decision. *See* March 11, 1997 Cong. Rec. S2114-15 (statement of Sen. Lieberman in support of Senate vote to authorize investigation into both illegal and improper activities).
5. I want to underscore the use of the term "appear" in this context. The Committee is neither qualified, nor permitted under the Constitution, to reach any definitive conclusions regarding whether the behavior of any person or entity violated the law; under the Constitution, only courts and juries may definitively determine guilt, and it is Congress' job to make laws, not to determine whether someone broke them. I must also emphasize that the term "illegal" does not necessarily mean "criminal." In many of the cases reviewed by the Committee, the evidence suggests that an individual's actions did not comport with governing legal standards, but does not sufficiently illuminate the individual's state of mind to allow for any meaningful determination of whether that individual should be considered a candidate for criminal sanctions. *See, e.g.,* 2 U.S.C. § 437g(d)(1)(A) (criminal sanctions available only upon showing of knowing and willful commission of violation).
6. The Committee heard testimony, for example, from Yuefang Chu and Xiping Wang that Keshi Zhan, apparently at the request of Charlie Trie and/or Ng Lap Seng, asked Chu and Wang to write checks to two Democratic congressional campaign committees and to the DNC. At the same time, Zhan provided them with funds to cover those checks. July 29, 1997 Hrg. pp. 131-50. If true, these transactions apparently would violate 2 U.S.C. § 441f, which prohibits making contributions in the name of another. Moreover, if Ng Lap Seng, a foreign national, provided the funds and directed the contributions, this transaction might also violate 2 U.S.C. § 441e, which prohibits direct or indirect contributions by foreign nationals. *See* Jerome Campana, July 29, 1997 Hrg. pp. 17-18 (suggesting funds for Chu and Wang contributions may have derived from Ng Lap Seng's Hong Kong company).
7. The Committee received evidence, for example, that a \$250,000 contribution to the DNC in 1996 from Cheong Am America, Inc. was funded with money from the company's foreign parent (*see* Hrg. Exhs. 1038, 1039, 1040 (DNC memorandum regarding return of donation and copies of checks)), as was a 1992 contribution from Hip Hing Holdings, Inc. to the DNC (*see* Hrg. Exhs. 101, 102 (check and request for reimbursement from abroad)). A 1992 contribution to the RNC from Michael



Kojima also appears to have been funded with money transferred to Kojima from foreign nationals for the purpose of making the contribution. *See* *Minority Views*, Chap. 6. Each of these transactions appears to violate 2 U.S.C. § 441e's prohibition against foreign nationals making political contributions directly or through any other person.

8. The Committee heard testimony suggesting that John Huang solicited campaign contributions while employed at the Department of Commerce, an apparent violation of the Hatch Act, 5 U.S.C. § 7323(a)(2). *See* *Minority Views* Chap. 4.

9. It is because of the importance I attach to personal accountability through the criminal justice system in ensuring respect for, and compliance with, the law that I voted against proposals to immunize witnesses in every case in which the Justice Department informed the Committee that such a grant could compromise an ongoing criminal investigation. *See, e.g.*, June 12, 1997 Committee Roll Call Vote (closed session) and Committee Meeting pp. 41-42 (open session); July 23, 1997 Committee Meeting pp. 2-8, 27-30. Governing law authorizes Congress to immunize witnesses even over the Justice Department's objection (*see* 18 U.S.C. § 6005), and I have no doubt that there are some cases in which Congress should exercise that authority. In my view, however, those cases are extremely rare, and they should come about only if Congress determines that the public's need for immediate information on a particular issue (due, for example, to a national crisis that paralyzes our government) overcomes the very strong presumption in favor of preserving the possibility of prosecuting a wrongdoer. Because I did not see any case made for overcoming that presumption during this investigation, I voted in each case to preserve the prosecutors' ability to conduct their investigation. For this reason, I must note my disagreement with any suggestion that the Committee erred in declining to grant immunity to John Huang. *See* *Minority Views* Chap. 4. Mr. Huang's actions were among the most disturbing examined by the Committee, and he appears to have engaged in a number of activities that skirted a variety of Federal laws. The Committee acted wisely in ultimately deciding not to pursue immunity for Mr. Huang.

10. *See* *Minority Views* Chaps. 39-41.

11. 424 U.S. 1 (1976).

12. 2 U.S.C. § 441a(a).

13. *See* *Buckley*, 424 U.S. at 13.

14. *Id.* at 19.

15. *Id.* at 25.

16. *See, e.g., id.* at 55-59.

17. *Id.* at 20-21.

18. *Id.* at 26-29.

19. *Id.* at 58.

20. The contribution limits imposed by 2 U.S.C. § 441a(a) apply only to donations made “with respect to any election for Federal office.” In a series of rulings beginning in 1978, the FEC read that term to exclude from the law’s contribution limits donations to parties that were not made with respect to particular Federal elections, but rather for the purpose of funding more generic activities like voter registration drives and party building activities. For a good discussion of the development and growth of the soft money loophole, see A. Corrado, T. Mann, D. Ortiz, T. Potter, F. Sorauf, “Campaign Finance Reform: A Sourcebook” (Brookings Institution 1997), pp. 167-77. *See also* the hearing testimony of Anthony Corrado, Sept. 25, 1997 Hrg. pp. 3-9.

21. *See Buckley*, 424 U.S. at 39.

22. *Id.* at 42-43.

23. *Id.* at 42-43.

24. *Id.* at 44 n.52.

25. Jerome Campana, Sept. 18, 1997 Hrg. pp. 184-86.

26. *Id.* at 187-89.

27. *Id.* at 180.

28. *See New York Times*, Feb. 22, 1997.

29. Richard Sullivan Dep., June 4, 1997 Vol. 1 pp. 127-28. Sullivan testified that when John Huang first approached him about Kanchanalak’s request to bring foreign nationals to a White House coffee, he told Huang it would be inappropriate. Nevertheless, when Huang reported that Kanchanalak was “adamant about this” and “has been a big contributor, a big supporter,” the DNC relented and allowed her to bring her associates to the June 18, 1996 coffee. Attendees at that coffee reported that the Thai executives then took up the bulk of the coffee’s time talking about issues of importance to them. *Id.* at 128-30, 135-36; Clarke Wallace Dep., Aug. 27, 1997 pp. 53-54; Beth Dozoretz Dep., Sept. 2, 1997 pp. 110-11.

30. A September 13, 1995 memo to Vice-President Gore from his National Security Advisor Leon Fuerth explained the National Security Council’s objections to such meetings. Calling Tamraz someone “with a shady and untrustworthy reputation” whose pipeline plan “is commercially questionable at best.” Fuerth wrote:

Tamraz’s penchant for making false claims is now impacting on the US Government. Tamraz recently told Turkish Prime Minister Ciller that he has full US Government support for his pipeline plan. This is not true, although it is possible he is taking your expression of interest to Mr. Sassounian and calling it full USG support. Tamraz’s line is that he is not looking for

support, only that he wants us to raise no objections. He then, however, takes comments that we have no objection and claims them as reflecting USG endorsement. We therefore have to be very careful even in offhand remarks to Mr. Tamraz. He also told Ciller that he will be meeting with President Clinton and you this week. We are checking to see if Tamraz may be part of a larger group meeting with you or the President this week, but as far as we can tell, this is an outright fabrication.

The NSC has advised that senior US Government officials not meet with Mr. Tamraz should he or his associates seek appointments. I concur with that recommendation.

September 17, 1997 Hrg. Exh. 1127.

31. Tamraz made approximately \$300,000 in contributions to the DNC and other Democratic causes between July 1995 and April 1996. Sept. 18, 1997 Hrg. Exhs. 1167, 1168. Between September 1995 and April 1996, Tamraz attended a number of DNC events, including several at the White House. Roger Tamraz, Sept. 18, 1997 Hrg. pp. 16, 19, 22, 27. Fowler acknowledged calling Nancy Soderburg of the National Security Council on Tamraz's behalf. Donald Fowler Dep. May 21, 1997 pp. 229-30. Shelia Heslin, the National Security Council staffer directly responsible for the Caspian Sea oil issues and most familiar with Tamraz, also reported receiving a phone call about Tamraz from Fowler. Shelia Heslin, Sept. 17, 1997 Hrg. pp. 22-24. Fowler could not recall having the conversation with Heslin, but did not dispute that it occurred. Donald Fowler Dep. May 21, 1997 p. 239.

32. 18 U.S.C. § 607 -- the statute that has been commonly invoked when reviewing these events -- by its terms criminalizes only the actual solicitation or receipt of "any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 in any room or building occupied in the discharge of official duties . . . ." The statute thus requires an explicit solicitation or receipt *in the Federal building*, and by referencing the election law's definition of contribution, Section 607 further explicitly limits itself to covering only the solicitation or receipt of so-called hard, or Federal, money. In addition, the statute's "official duties" reference limits its geographical application to only certain rooms within the White House; according to the Justice Department's longstanding interpretation of this provision, Section 607 does not apply to either the residence portion of the White House or to so-called mixed-use rooms, such as the Map room, that are used for both private and official functions. *See* 3 Op. O.L.C. 31, 38-44 (1979). The White House coffees do not appear to have violated Section 607, because most apparently took place in "mixed-use" rooms (*see* Jerome Campana, Sept. 18, 1997 Hrg. p. 184 (most coffees occurred in Map and Roosevelt Rooms)), and there is no evidence before the Committee that any solicitation occurred at any coffee that took place in an official use room. In fact, the Committee heard only one allegation that a solicitation occurred at any of the coffees, and attendees of that coffee offered contradictory testimony regarding whether even that solicitation occurred. *See* Karl Jackson, Sept. 16, 1997 Hrg. p. 11 (John Huang solicited financial support at Map Room coffee); Beth Dozoretz, Sept. 16, 1997 Hrg. pp. 118-20 (no solicitation occurred).

33. Warren Meddoff, Sept. 19, 1997 Hrg. pp. 6-8.

34. Harold M. Ickes, October 8, 1997 Hrg. pp. 96-102; Harold M. Ickes Dep., June 27, 1997 Vol. 2 pp. 37-58; Warren Meddoff, Sept. 19, 1997 Hrg. pp. 5-17; Hrg. Exh. 929 (Ickes memo to Meddoff).

35. I want to comment on the Minority Views' suggestion (Chapter 17) that Meddoff was not a credible witness. In my view, Meddoff's credibility is irrelevant to determining the propriety of the transaction under scrutiny, because Ickes and Meddoff agree on all of the facts upon which my assessment of the issue relies: Meddoff told Ickes his associate wanted to donate a significant sum to help the President's campaign, Ickes told Meddoff that the presidential public financing laws prevented him from doing so directly, and Ickes then, in response to Meddoff's further request for ways his associate could give to tax-exempt organizations, sent Meddoff a list of tax-exempt organizations to which Meddoff's associate could donate. *See* Harold M. Ickes, Oct. 8, 1997 Hrg. pp. 96-102; Harold M. Ickes Dep., June 27, 1997 Vol. 2 pp. 37-58; Warren Meddoff, Sept. 19, 1997 Hrg. pp. 5-17. The only relevant difference in these two witnesses' testimony lay in their recollection of what Ickes told Meddoff when he called the transaction off. Ickes recalls that he told Meddoff his memo "was inoperative," while Meddoff testified that Ickes told him to "shred" the memo. Harold M. Ickes Dep., June 27, 1997 Vol. 2 pp. 42-43; Harold M. Ickes, Oct. 8, 1997 Hrg. p. 128; Warren Meddoff, Sept. 19, 1997 Hrg. p. 16. I have no way of knowing which witness had the better recollection as to the specific language used in this particular conversation, and this dispute has no bearing on my comments on the propriety of the transaction.

36. Haley R. Barbour, July 24, 1997 Hrg. pp. 160-61.

37. RNC Chairman Haley Barbour testified that the NPF owed \$2 million to the RNC by 1994. July 24, 1997 Hrg. p. 166. Fred Volcansek explained at his deposition that the purpose of the NPF obtaining a loan was "to see the loan [from the RNC to the NPF] repaid to meet the fiscal needs of the RNC." Volcansek Dep. July 21, 1997 pp. 40-41.

38. Fred Volcansek, July 24, 1997 Hrg. pp. 26-28.

39. Fred Volcansek Dep., July 21, 1997 pp. 49-54, 59.

40. Fred Volcansek, July 24, 1997 Hrg. pp. 34-36 & Exh. 277 (Volcansek's July 28, 1994 Talking Points for Barbour). *See also* July 24, 1997 Hrg. Exh. 278 (August 15, 1994 Volcansek Proposal for Young) ("In planning for the '94 mid-term election cycle in the Congress, it has been determined that there are 176 highly contested races. The RNC is faced with the need to support substantially over 90 of these races. . . . What the NPF needs from you is a three year loan guarantee in the amount of \$3.5 million. . . if there is any default in loan payments by the NPF, [Chairman Barbour] will authorize the guarantee of the RNC and ask for the Republican National Committee's ratification. As Chairman of the RNC and the NPF, he intends to be certain that neither organization defaults on its obligations. . . . Chairman Barbour, Senator Dole and Congressman Gingrich, who are committed to the NPF, will make themselves available to express their support for your participation on this project"); Benton Becker, July 23, 1997 Hrg. pp. 125-26 (agreeing that "there was never any doubt that the effect of the guaranteeing of the loan to the National Policy Forum would be to free up

money for the Republican elections in 1994”).

41. See Benton Becker, July 23, 1997 Hrg. pp. 66-67 & Hrg. Exh. 285 (August 30, 1994 letter from Barbour to Becker on RNC stationery) (“Because NPF is separate from the Republican National Committee, the RNC is not automatically responsible for its debts. Nevertheless, I am committed to making sure NPF raises sufficient funds to cover its operations and to pay off any and all its debts. Moreover, as Chairman of the RNC, in the event NPF defaults on any debt, I will ask the Republican National Committee to authorize me to guarantee and pay off any NPF debts. I am confident the RNC would grant me such authority at its next meeting, provided there is valid, outstanding debt of NPF to a US bank or other lending institution, guaranteed by a US citizen or domestic corporation”).

42. Benton L. Becker, July 23, 1997 Hrg. pp. 45-48.

43. Haley R. Barbour, July 24, 1997 Hrg. pp. 236-37 (NPF repaid \$1.6 million to RNC).

44. Benton L. Becker Dep., June 3, 1997, pp. 81-87. The RNC and Ambrous Young reached a partial settlement of their dispute, in which the RNC agreed to compensate Young’s company (“Young Brothers”) for part of the money it lost when NPF defaulted on its loan. After NPF and Young Brothers reached the agreement under which NPF would return \$800,000 to Young Brothers, Young Brothers received a check from Signet Bank for \$55,460 in interest earned by the certificates of deposit Young Brothers had posted as collateral over the life of the loan. NPF promptly wrote Young Brothers that, in view of this “windfall,” the NPF would unilaterally reduce the \$800,000 payment it already had agreed to by the amount of interest Young Brothers had received on its own money. Benton Becker Dep., June 3, 1997 pp. 85-86. See also Benton Becker, July 23, 1997 Hrg. pp. 52-53.

45. Common Cause, “The Soft Money Laundromat” (available on Common Cause Web Site, [www.commoncause.org](http://www.commoncause.org)).

46. FEC News Release “FEC Reports Major Increase in Party Activity for 1995-1996” (March 19, 1997).

47. For example, each of the tobacco companies that gave more than \$10,000 in soft money to the Democratic Party (Philip Morris, RJR Nabisco, U.S. Tobacco and the Tobacco Institute) also donated significant amounts to the Republican Party. Revlon Group Inc., M & F Holdings gave \$562,250 to the Democratic Party and \$140,000 to the Republican Party. Freddie Mac -- Federal Home Loan Mortgage gave \$265,000 to the Democrats and \$250,000 to the Republicans, while Bank America Corp. gave \$355,200 to the Republicans and \$190,389 to the Democrats. For these and similar examples, see Common Cause, *supra*.

48. According to the FEC, Democratic national party committees raised \$123.9 million in soft money in the 1995-1996 election cycle, up 242 percent from the 1992 cycle, and spent \$121.8 million, or 271 percent more than in 1992. Republican national party committees raised \$138.2 million in soft dollars in the 1996 cycle, up 178 percent from 1992, and spent \$149.7 million, 224 percent more than in 1992. FEC News Release “FEC Reports Major Increase in Party Activity for 1995-1996”

(March 19, 1997). Although parties were not required to report soft money contributions and expenditures in the early 1980s, the best available estimates put party soft money at \$19.1 million during the 1980 election cycle and \$21.6 million in 1984. Corrado, *et al.*, *supra* at p. 173.

49. FEC News Release “Financial Disclosure Reports of Major Political Parties Show Increases in ‘Soft Money’ Contributions” (Sept. 22, 1997).

50. 26 U.S.C. §§ 9001-9013.

51. 26 U.S.C. §§ 9031-9042.

52. October 31, 1997 Memorandum from FEC Staff Director John Surina to the Commission Regarding the Status of the Presidential Election Campaign Fund.

53. 26 U.S.C. §§ 9033-9035.

54. *See* Surina Memo, *supra*.

55. 26 U.S.C. § 9008(d).

56. *See* Surina Memo, *supra*.

57. Using the law’s language, candidates are prohibited from making “qualified campaign expenses” in excess of the statutory limit and also are prohibited from accepting contributions to make any “qualified campaign expenses.” 26 U.S.C. § 9002(11) defines the term “qualified campaign expense” as an expense “incurred by the candidate [for President or Vice-President] . . . to further his election” or “incurred . . . by an authorized committee of the candidates . . . to further the election” of those candidates. In addition, presidential candidates must agree not to spend more than \$50,000 of their own money in connection with their campaigns. 26 U.S.C. § 9004(d).

58. *See* Surina Memo, *supra*. It is important to add that the election laws do leave some room for private financing of presidential campaigns. Most importantly, presidential campaign committees still may seek contributions (subject to hard money limits) to help defray the cost of legal and accounting services. *See* 11 C.F.R. § 9003.2(a)(2). In addition, 2 U.S.C. § 441a(d) authorizes political parties to spend a specified amount (2 cents times the voting age population) in coordination with or on behalf of their presidential candidates. The parties are free to raise this money from private sources, subject to the Federal Election Campaign Act’s hard money limits.

59. S.Rep. No. 93-689, p. 6 (1974). *See also* *Buckley v. Valeo*, 424 U.S. at 96 (“It cannot be gainsaid that public financing as a means of eliminating the improper influence of large private contributions furthers a significant governmental interest”).

60. 424 U.S. 1, 57 n.65.

61. 26 U.S.C. § 9003(b).

62. Harold Ickes Dep. June 26, 1997 Vol. 1 pp. 50-51, June 27, 1997 Vol. 2 pp. 35-36.

63. During a June 1996 interview, Ted Koppel asked Dole how, in light of his dwindling pre-convention campaign funds, he expected to fund additional television advertising. Senator Dole's response:

[W]e can, through the Republican National Committee, through what we call the Victory '96 program, run television ads and other advertising. It's called generic. It's not Bob Dole for president. In fact, there's an ad running now, hopefully in Orlando, a 60-second spot about the Bob Dole story: Who is Bob Dole? What's he all about? Pretty much the same question that Ted Koppel asked me. So we'll do that. . . . It doesn't say "Bob Dole for president." It has my -- it talks about the Bob Dole story. It also talks about issues. It never mentions the word that I'm -- it never says that I'm running for president, though I hope that it's fairly obvious, since I'm the only one in the picture! (Laughter).

Oct. 22, 1997 Hrg. Exhs. 2336M (Transcript of ABC News interview of Bob Dole (June 6, 1996)), 2405M.

64. I believe that the argument supporting the legality of the coordination of issue ads between presidential candidates and their parties is weaker than the argument supporting the legality of coordination between other candidates and the parties. The argument supporting the legality of coordination in general is as follows: the Federal Election Campaign Act ("FECA") limits the extent to which individuals and outside groups can "coordinate" their campaign activities with candidates by defining the term "contribution" to include "expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents" (2 U.S.C. § 441a(a)(7)(B)(i)). In other words, FECA defines coordinated *expenditures* as *contributions* from the spending person or entity to the candidate, therefore subjecting such expenditures to the law's strict contribution limits. However, because FECA limits the term "expenditure" to "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person *for the purpose of influencing any election for Federal office*" (2 U.S.C. § 431(9)(A)(i)), and because the term "for the purpose of influencing any election for Federal office" has been interpreted as limited to only express advocacy, many argue that the rule circumscribing coordination applies only to coordinated *express advocacy* expenditures. Under this interpretation, parties, outside groups and individuals are free to coordinate *issue advocacy* and other similar activities with candidates, and such coordinated expenditures do not count toward the spending entity's contribution limits. An argument can be made that this very limited definition of coordination should not apply to expenditures made in concert with presidential candidates. That is because what the presidential financing laws prohibit is the making of expenditures beyond the spending limit (or the acceptance of contributions to fund such expenditures) that are "to further the election" of the candidate. In contrast to FECA's definitions of the terms "contribution" and "expenditure," the First Amendment does not mandate a narrow reading of those terms in the presidential financing law, because the presidential limits are voluntarily accepted in return for the public financing available to the presidential campaigns. It therefore is arguable that spending on issue ads made in coordination with the presidential campaigns violates the public

financing laws because that spending is “to further the election” of the president, even though those ads may not contain *Buckley*’s magic words.

65. 2 U.S.C. §§ 441b(a), 441e.

66. 2 U.S.C. § 434.

67. 26 U.S.C. § 501(c)(3).

68. 26 U.S.C. § 501(c)(4); IRS Revenue Ruling 81-95, 1981-1 C.B. 332 (1981). Although the tax code permits organizations with 501(c)(4) status to engage in candidate advocacy, provisions in FECA, such as the prohibition against corporations engaging in express candidate advocacy, generally restrict their ability to do so.

69. 26 U.S.C. § 527 grants exemption from certain taxes to political organizations engaged in attempting to influence Federal, State or local elections. Organizations involved in Federal election activity that qualify for this status usually have recognized that those activities also bring them under the purview of FECA’s requirements.

70. 11 C.F.R. § 106.5; FEC Advisory Opinion 1995-25 to RNC.

71. *The Washington Post*, Feb. 9, 1997, p. A1.

72. 26 C.F.R. § 1.501(c)(4)-1; IRS Revenue Ruling 81-95.

73. *See* Hrg. Exh. 2400; DFP004244; *The Washington Post*, Oct. 23, 1997, p. A1.

74. *The Washington Post*, Oct. 23, 1997, p. A1.

75. *Ibid.*

76. *Ibid.*; Hrg. Exh. 2400.

77. Mark Thomann Dep., Sept. 23, 1997 pp. 19-61; Oct. 9, 1997 Hrg. Exh. 1409 (\$100,000 check from Duvaz Pacific Corp. to Vote Now 96).

78. Joseph Sandler Dep, Aug. 21, 1997 Vol. 3 pp. 26-30 (noting DNC’s return of checks); Harold Ickes Dep. Sept. 22, 1997 Exh. 38 (check to Vote Now 96); *New York Times*, Sept. 20, 1997, p. A1.

79. *The Washington Post*, Nov. 22, 1997, p. A1.

80. Mark Thomann Dep., Sept. 23, 1997 p. 68.

81. Richard Sullivan Dep., Sept. 5, 1997 p. 75.



82. The Annenberg Center for Public Policy, Sept. 16, 1997, "Issue Advocacy During the 1996 Campaign: A Catalogue," p. 21.
83. *Id.* at 4.
84. *Los Angeles Times*, May 5, 1997, p. A1.
85. 461 U.S. 540, 544, 545 (1983).
86. See Joint Statement of Senator John Glenn and Senator Joseph Lieberman, July 15, 1997 ("the information shown to us strongly suggests the existence of a plan by the Chinese government -- containing components that are both legal and illegal -- designed to influence U.S. congressional elections. . . .[T]here [is not] sufficient information to lead us to conclude that the 1996 presidential election was affected by, or even part of, that plan. ") (emphasis in original).
87. See Thomas R. Hampson, July 15, 1997 Hrg. pp. 67-71 (describing Lippo's business ties to Chinese Government).
88. See *Newsweek*, "A China Connection," Feb. 24, 1997 p. 34; *Sunday Times*, "Chinese Spies Had Open Door to Oval Office," Nov. 10, 1996.
89. Thomas R. Hampson, July 15, 1997 Hrg. pp. 67-68.
90. *Id.* at 68-70.
91. Hrg. Exh. 125 (Oct. 7, 1993 letter from Huang to Jack Quinn).
92. Jerome Campana, July 29, 1997 Hrg. pp. 11, 21.
93. *The Washington Post*, March 16, 1997.
94. Jerome Campana, July 29, 1997 Hrg. pp.11, 21-22; *New York Times*, Jan. 4, 1997; David Mercer Dep., May 27, 1997, pp. 139-42.
95. Jerome Campana, July 29, 1997 Hrg. p. 21.
96. Congressional Research Service Aug. 25, 1997 Memorandum to Sen. Lieberman from Kerry Dumbaugh, Specialist in Asian Affairs.
97. *Los Angeles Times*, July 27, 1997, p. A1.
98. Roger Tamraz, Sept. 18, 1997 Hrg. p. 66.
99. *The Washington Post*, "Reality Check: The Politics of Mistrust," January 28, 1996, p. A1.

100. *The Gallup Poll*, “Americans’ Faith in Government Shaken But Not Shattered by Watergate,” June 2, 1997.
101. *The Polling Report*, Thomas H. Silver, Publisher and Editor, April 21, 1997, p. 1
102. *The Gallup Poll*, “Americans Not Holding Their Breath on Campaign Finance Reform,” October 11, 1997.
103. *Ibid.*
104. Oct. 22, 1997 Hrg. p. 16.
105. The Senate most recently voted on a proposed Constitutional amendment, S.J. Res. 18, on March 18, 1997. The Resolution failed by a vote of 38-61.
106. On February 24, 1998, the Senate refused “to table” (vote against) McCain-Feingold by a vote of 51 in favor of McCain-Feingold to 48 against, with one Senator who favored McCain-Feingold not voting. Feb. 25, 1998 Cong. Rec. S906. The Senate voted against tabling McCain-Feingold again on February 25, 1998 by a vote of 50-48, with two Senators who favored McCain-Feingold not voting. Feb. 25, 1998 Cong. Rec. S1001. Despite this majority in favor of McCain-Feingold, the bill did not pass because the Senate’s cloture rule requires 60 votes to end debate on a measure, and only 51 Senators voted in favor of ending debate on February 26, 1998. Feb. 26, 1998 Cong. Rec. S1045.
107. *The Gallup Poll*, “Americans Not Holding Their Breath on Campaign Finance Reform,” October 11, 1997.
108. See *Buckley*, 424 U.S. at 57 n.65; *Regan v. Taxation with Representation of Washington*, 461 U.S. at 544-45.
109. “The Hope for America,” speech delivered by the Rev. Billy Graham upon acceptance of the Congressional Gold Medal, Washington, D.C., May 3, 1996.